

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

August 4, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 3, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are in the process of updating our sales and use tax guidelines for the garment (tuxedo) sales and rental industry. Following is a fact pattern for which we would like to obtain your guidance as it relates to sales and use tax compliance requirements.

**Fact Pattern:**

Company X is in the business of selling and renting tuxedos and accessories (i.e. shoes, vests, ties, etc.). 80% of Company X's business operations is on a wholesale basis, whereas, Company X sells products to smaller business operations who either sell or rent the products to their customers. The remaining 20% of business operations relate to direct sales or rental of products to customers (users). All wholesale transactions are shipped to the retailer's location. Direct sale and rental garments can be picked-up at a Company X location or shipped to the customer. All garments are packaged appropriately to retain the quality of the product until used.

Packaging includes disposable plastic covers and cardboard containers. It is not a requirement nor the intent of Company X to have the packaging materials or containers returned. In a sale situation, there is no return of the packaging items. In a rental situation, the customer may use the packaging containers to deliver the goods back to Company X after the rental period is concluded. Whether or not a container is reused is dependent upon the condition of the returned container. Disposable items (i.e. plastic) are not reusable. As stated above, it is not the intent of Company X upon purchase to

reuse containers, however, if a container is returned in good condition, reuse will be considered.

Company X purchases packaging materials and containers in bulk. The materials and containers are then allocated to sale and rental activities as needed.

#### Taxation Questions – Wholesale and Direct Sale Transactions

1. Do the packaging materials and containers qualify for a resale exemption?
2. If yes, what resale exemption form should be provided to the vendor at the time of purchase?
3. On the basis that the materials and containers are purchased in bulk, can Company X issue an exemption on all purchases transactions with a self-remittal of use tax on any later determined taxable consumption?

#### Taxable Questions – Rental Transactions

1. Does your state require that a sales tax be collected on the garment rental transactions to customers? Does your state tax any shipping or handling charges associated with the sale?
2. If your state taxes the rental transaction, does your state allow a resale exemption to apply to any packaging materials and containers associated with the rental transaction?
3. If your state deems the resale exemption to be limited to only the quantifiable non-returned containers, can Company X implement a resale exemption percentage for the qualifying exempt portion of the purchase transactions? It would be assumed that the resale exemption would apply to all non-returned containers and all non-reusable materials and containers.

We appreciate your assistance with this inquiry. Please provide me with your written guidance at your earliest convenience. Please reference any applicable statutes, regulations, court cases or letter rulings related to the activities referenced above. Do not hesitate to contact me with any questions.

Your inquiry regards the “resale” exemption from sales tax set out in 86 Ill. Adm. Code 130.2070(b)(1) governing “Sales of Containers, Wrapping and Packing Materials and Related Products.” The sale of tangible personal property for the purpose of resale is not taxable so long as the purchaser provides the seller with a Certificate of Resale in accordance with 86 Ill. Adm. Code 130.1405. Please note that sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers’ Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers. Please see 86 Ill. Adm. Code 130.2070.

The term “containers” includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons,

sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained. 86 Ill. Adm. Code 130.2070(a).

For example, a sale of boxes to a retailer who fills the boxes with tangible personal property and sells the tangible personal property in such boxes is a sale of the boxes to the retailer for resale by the retailer. If the retailer places the boxes upon pallets that are then transferred to the purchasers and the ownership of the pallets also passes to the purchasers, the retailer who purchases the pallets would be making a purchase for resale. There is no difference between a returnable container whose ownership is transferred with a deposit being taken and a non-returnable container. See 86 Ill. Adm. Code 130.2070(b)(2).

Sellers of containers to purchasers who do not transfer the ownership thereof to others, but who intend such containers merely to provide a means of containing tangible personal property which in the process of being delivered to their customers, retaining and reusing or discarding the containers after such delivery is completed, and sellers of containers to purchasers who use such containers as a means of storing tangible personal property, are making sales for use or consumption, and their receipts from such sales are subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2070(c)(1).

Persons who, under bona fide agreements, rent or lease the use of automobiles under lease terms of more than one year, furniture, bus tires, costumes, towels, linens or other tangible personal property to others are, to this extent, not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act and are not required to remit Retailers' Occupation Tax from such transactions. However, such lessors are users of the property and are subject to the Use Tax when purchasing tangible personal property which they rent or lease to others, (see Sections 150.201 and 150.305(e) of the Use Tax (86 Ill. Adm. Code 150) and Section 130.220 of the Retailers' Occupation Tax Act. If the Use Tax is not paid to a supplier, then the lessor must self assess the Use Tax and remit it directly to the Department of Revenue.

The resale exemption does not apply to lessors. Boxes used by lessors are consumable supplies on which Use Tax is owed.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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